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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,275	01/26/2001	Thomas Thoroe Scherb	P20416	4360

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EXAMINER
HALPERN, MARK

ART UNIT	PAPER NUMBER
1731	9

DATE MAILED: 04/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	
Office Action Summary	09/769,275	SCHERB ET AL.	
	Examiner	**Art Unit**	
	Mark Halpern	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-70* is/are pending in the application.

4a) Of the above claim(s) *48-67 and 70* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-47,68 and 69* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4&6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1) Applicant's election with traverse of invention I, drawn on claims 1-47, 68-69, in Paper No. 8, is acknowledged. The traversal is on the ground(s) that the search is coextensive. This is not found persuasive because the search is not coextensive.

Claims 48-67, 70, are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention II, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2) Claims 1-10, 16, are rejected under 35 U.S.C. 102(b) as being anticipated by Kamps (WO 96/35018).

Claims 1, 3-6, 8-10, 16: Kamps discloses an apparatus for producing a tissue paper web. The apparatus has an inner continuous dewatering belt 12 and an outer continuous dewatering belt 13; said belts are converging and are guided over a forming element, which is former roll 15. A material feed device, a headbox 11, feeds a paper making stock suspension into a gap between the belts forming a fiber tissue web. The belts separate, with the web is following the inner belt 12 over a pressure roll 41, which then enters a nip formed with a drying roll drum 40. The web then adheres to heated drying drum, which is equipped with a drying hood (pg. 9, line 27 to pg. 10, line 5, and Figure 5). As shown in the Kamps Figure 5, the outer belt 13 does not come in contact with the forming element.

Claims 2, 7; the dewatering wires of Kamps are of variable permeability (pg. 7, lines 21-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3) Claims 11-15, 17-21, are rejected under 35 U.S.C. 103(a) as being obvious over Kamps in view of Erikson (WO 94/28242).

Claims 11-15, 17-21; Erikson discloses a transfer suction box 23 adjacent to the separation point to ensure the desired transfer of the web to the inner forming fabric 4

(Erikson, Abstract, pgs. 6-8, and Figure 1). It would have been obvious to combine the teachings of Erikson and Kamps, because such a combination would assure a means of web transfer onto the inner belt in the design of Kamps. The suction box forces are used in conjunction with the suction forming roll depending on the process conditions and the product being formed. The Erikson design also includes hydrofoil 7.

4) Claims 22-47, 68, are rejected under 35 U.S.C. 103(a) as being obvious over Kamps in view Erikson and further in view of Kanitz (6,231,723).

Claims 22, 44-46; Kanitz discloses a conditioning device 74, which is a water shower, positioned adjacent to an outer belt 28 (Kanitz, col. 3, line 10 to col. 4, line 49, and Figure 1). It would have been obvious to combine the teachings of Kanitz and Kamps in view of Erikson, because the combination would provide maintenance on the forming belt in the Kamps design.

Claims 23, 29, 68; Kamps discloses wires of variable permeability.

Claim 24; Kamps discloses a suction element adjacent the inner belt.

Claims 25-27; Kamps discloses tissue separation from the outer belt and adhering to the inner belt, said belts being continuous belts.

Claim 28; Kamps discloses the forming element being a forming roll.

Claim 30; Kamps discloses that the outer belt does not come in contact with the forming element.

Claims 31-32, 36; Erikson discloses a suction forming roll, said roll comprises a suction zone.

Claims 33-35, 37-43; Erikson discloses suction box 23 in area adjacent to the separation point; said box is inside an inner belt loop. Vacuum is adjusted when the box is used in conjunction with the suction forming roll. Erikson discloses hydrofoil 7.

Claim 47; Kamps discloses a crescent former (Kamps, pg. 9, line 29).

5) Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamps in view of Erikson, and in view of Kanitz as applied to claim 68 above, and further in view of Tietz (6,235,160). Tietz discloses the web being guided over an inner belt 5 to a nip 4 between a drying cylinder 3 and a shoe press roll 2, after which the web is removed from the inner belt 5 (Tietz, col. 4, lines 19-68, and Figure). It would have been obvious to combine the teachings of Tietz with the teachings of Kamps, Erikson and Kanitz, into the design of Kamps, because such a combination would provide an economic means of removing moisture from the web prior to drying.

6) Claims 1, 3-6, 8, 16, are rejected under 35 U.S.C. 102(e) as being anticipated by Tietz (6,235,160). Tietz discloses an apparatus for producing a tissue paper web. The apparatus has an inner continuous dewatering belt 5 and an outer continuous dewatering belt 12; said belts are converging and are guided over a forming element, which is former roll 11. A material feed device, a headbox 8, feeds a paper making stock suspension into a gap between the belts forming a fiber tissue web 1. The belts separate, with the web is following the inner belt 5 over a suction device 6, which is a suction roll, which then enters an elongated press nip 4 formed by a drying roll drum 3 and a shoe press unit 2. Downstream from the nip 4, the web adheres to heated drying drum, which is equipped with a drying hood 13 (col. 4, line 19 to col. 5, line 5, and

Figure). As shown in the Tietz Figure, the outer belt 12 does not come in contact with the forming element

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7) Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 6,235,160. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 falls within the scope of claim 7 of the patent. Additionally any other differences recited in the dependent claims would be well within the purview of ordinary skill in the art.

Conclusion

8) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 703-305-4522. The examiner can normally be reached on Mon-Fri, (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

MH

Mark Halpern
Patent Examiner
Art Unit 1731

April 2, 2002

Stanley S. Silverman
Supervisory Patent Examiner
Technology Center 1700